the other partners, admitting him to the partnership. In this connection I would quote the Judgment of Wallis, C.J., in *The Official Assignee of Madras & anor. v. V.P.L.R.M. Palaniappa Chetty*[15] at page 830:

> "The interest of a minor in a Joint Hindu Family business, whether existing at the date of his birth or founded during his minority, is acquired by virtue of his belonging to the family and does not depend on any agreement on his part or on his admission by the other members of the family to the benefits of the partnership"

and Spencer, J., in the same case says:

> "But as I observed in **Gangayya v. Venkataramiah**, a definite and conscious act on the part of the other partners is needed for admitting a minor to the benefits of a partnership".

It seems clear therefore, that the minor's interest, whatever it was, was acquired by virtue of being a member of a Joint Hindu Family and it is necessary to enquire the extent of that interest and of his father's interest, which passed to him on his father's death.

I have already stated that the property in the business firm of R.M.A.T.M. must be held to be ancestral or Joint Family property. The share of the deceased was 1/3 and his minor son, whether born prior to or subsequent to the partition, acquired an interest equal, to some extent, with his father in this 1/3 share. Accretions to such share possess the same characteristics.

The father, however, has, as head or Karta of the family, certain exclusive rights over such property. He can sell or mortgage it to discharge debts, even debts contracted for his own personal benefit, and similarly such property may be seized in execution for such purpose. He is in sole control of the income and expenditure and he is only liable to account for assets received, on a partition. He can alienate the property without the consent of others interested, provided such alienation is for a legal necessity or for the benefit of the estate. He may make gifts of the property within reasonable limits either charitable or for pious purposes. All these acts are binding on the interests of other members of the family, but such other members have no such rights, nor are they entitled to accounts, except on a partition. The interest of a son cannot be defined in terms of shares in the property and it is indefinable. Such interest may be decreased or increased by the birth or death of other sons. It is clear, however, that whatever interest the father has in the Joint Family property, such passes on his death to his son or sons and just as it is impossible to define, in terms of shares, what interests the son or sons have, so, as between him and his sons, it is impossible to define, in terms of shares, what interest the father has, which passes on his death to his son or sons.

Now, I have shown that the father of a Joint Hindu Family is entitled to dispose of the joint property under Hindu law appertaining to Joint Hindu Families and not only so, but he is a person competent to dispose of property as described by section 3 of the Estate Duty Enactment.

In this connection it is relevant to refer to section 5 (1) of the Estate Duty Enactment which says that property passing on the death of a deceased shall be deemed to include "(1) Property of which the deceased at the time of 'his death was competent to dispose' ", and I ask myself the question "What property?" and the answer appears to be the 1/3 share in the firm of which he was competent to dispose. Apart from this, however, I think one must also hold that during his life the deceased must be deemed to be a trustee of this 1/3 share for himself and his son or sons; and not that this 1/3 share was held jointly by himself and his son, in definable shares. The son or sons are not competent to dispose of their shares or interests and they have no powers whatsoever in relation to their shares or interests except to demand a partition. If such partition is demanded and acceded to, then the share held by the head of the family in trust for himself and others is sub-divided into definable shares and this is what was done by the sons of Ramasamy the founder.

Assuming, as I have done, that the father is a trustee for himself and his sons, then also the property is deemed to pass on the death of the father unless such trust property has been dealt with as set out in section 6 of the Enactment, and it has not been so dealt with.

For the above reasons I am therefore satisfied that the manner and the amount in which the Collector has assessed the estate duty payable is correct and that the plaintiff has failed to shew it to be otherwise.

The application is therefore dismissed with costs.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
May 20, 1940.

TONG KE KEE vs. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 55 of 1940]

Criminal Procedure Code (Cap. 6), section 422 —Irregularity—Illegality.

At the trial a statement made to the police in the course of an enquiry was put to a witness without the necessary formalities being followed. Secondly the record of certain proceedings before the Protector of Chinese was produced without being proved. On appeal it was contended that there were irregularities which came within the scope of section 422 of the Criminal Procedure Code.

Held, that before that section can be applied an Appellate Court should be reasonably certain that the Court below should have arrived at the same conclusion if the irregularity complained of had not occurred.

Held further, that what is complained of must be an irregularity as distinct from an illegality. Both these matters were illegalities.

CRIMINAL APPEAL.

M. Diamond for appellant.

T. V. A. Brodie, Deputy Public Prosecutor, for respondent.

Murray-Aynsley, J.—In this appeal various grounds are set forth. I think that only two points are worthy of notice. These relate to points of procedure. Firstly a statement made to the Police in the course of an enquiry was put to a witness without the necessary formalities being followed. Secondly the record of certain proceedings before the Protector of Chinese was produced without being proved in any way.

The learned Assistant Legal Adviser does not dispute the fact that these irregularities occurred, but contends that the matter is one which comes within the scope of section 422 of the Criminal Procedure Code. In order that any matter should come within the scope of that section it is in the first case necessary that an Appellate Court should be reasonably certain that the Court below should have arrived at the same conclusion if the irregularity complained of had not occurred.

It is further necessary that what is complained of should be what is called an irregularity as distinct from an illegality. If it is an illegality the question as to whether it was material is superfluous.

I may add that I consider that the production of an unproved document by a witness is not a question of "the improper admission or rejection of any evidence."

I consider that both these matters were illegalities and the conviction cannot standing.

There must be a new trial before a different Magistrate.

Appeal allowed. New trial ordered.

[APPELLATE CRIMINAL JURISDICTION]

POYSER, C.J.

May 10, 1940.

J. F. GOOCH vs. PUBLIC PROSECUTOR.

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 19 of 1940]

Road Traffic Enactment (No. 17 of 1937), section 25 (1)—Fast traffic proceeding along slow traffic lane—Passing vehicle on near side—Dangerous driving.

The appellant was charged with and convicted of dangerous driving under section 25 (1) of the Road Traffic Enactment. He drove his car rapidly along a slow traffic lane and passed a vehicle on the near side. There was no evidence that his act endangered or was likely to endanger any person.

Held, that in the absence of evidence of dangerous driving, it is not an offence for fast moving traffic to proceed along the slow traffic lane or to pass a vehicle on the near side.

J. T. Tosswill for appellant.

A. J. Grattan-Bellew, Deputy Public Prosecutor, for respondent.

Poyser, C.J.—The appellant was charged as follows:

> "That you on or about 11th January, 1940 at 6.25 p.m. at Java Street, Kuala Lumpur, did drive a motor car No. B. 1435 on the public road dangerously, an offence punishable under section 25 (1) of the Road Traffic Enactment (No. 17/37)".

He was convicted and fined $65, and his driving licence was ordered to be endorsed.

The undisputed facts are that the appellant passed two cars in Java Street on the near side and then turned to the left up Klyne Street, and in order to do so proceeded along a part of the slow traffic lane. His speed was estimated by prosecution witnesses at 25–30 miles, and he was travelling in second or third gear. The appellant said he was going at 18–20 miles per hour.

The evidence does not in my opinion establish the charge of dangerous driving, for there was no evidence that the appellant's act endangered or was likely to endanger any person. Mr. Pennefather Evans could not recollect what traffic there was on the slow traffic lane, and Mr. Kinder could not say whether the appellant passed any cyclist or other slow moving traffic. Mr. Dobree, however, stated he himself would have passed the cars in front of him if it was not for the slow traffic lane.